



Office of the Attorney General
State of Texas

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March 21, 1995

Honorable Keith Oakley
Chair
House Committee on Public Safety
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 95-019

Re: Whether terms of an agreement between a public employer and a collective bargaining agent representing fire fighters pursuant to chapter 174 of the Local Government Code prevail over provisions of chapter 143 of the Local Government Code (ID# 31827)

Dear Representative Oakley:

You ask whether a city that has adopted chapters 143 and 174¹ of the Local Government Code may agree with the collective bargaining agent representing its fire fighters pursuant to chapter 174 to change or amend specific provisions of chapter 143 concerning the terms and conditions of employment. This question arises in the context of grievance proceeding by probationary firefighters who were terminated. This matter was submitted to mediation, and the parties agreed to reinstatement of the terminated firefighters subject to certain conditions. A question has been raised about the legality of the reinstatement of the probationary fire fighters pursuant to a mediated agreement, in view of the provisions in chapter 143 of the Local Government Code for filling beginning positions. *See* Local Gov't Code § 143.026.²

Chapter 143 of the Local Government Code concerns municipal civil service protection for firemen and policemen. A municipality with a population of 10,000 or more that adopts its provisions may establish a civil service system for fire and police departments. Local Gov't Code §§ 143.001, .002. Chapter 174 of the Local Government Code, the Fire and Police Employee Relations Act, applies to municipalities and other political subdivisions that adopt its provisions. Local Gov't Code §§ 174.001, .003(4), .051. It authorizes the fire fighters and police officers employed by the political

¹Chapter 174, The Fire and Police Employee Relations Act, was added to the Local Government Code by Act of May 12, 1993, 73d Leg., ch. 269, § 4, 1993, Tex. Sess. Law. Serv. 990, 1265-74. Another chapter 174, concerning purchase of continued health coverage at retirement by certain municipal and county employees, was added to the Local Government Code by Act of May 25, 1993, 73d Leg., ch. 663, § 1, 1993 Tex. Sess. Law Serv. 2462, 2462-64.

²We will not consider whether a probationary fire fighter who is terminated and then reinstated after a grievance is actually subject to provisions on filling beginning positions.

subdivision to bargain collectively with the subdivision about compensation, hours, and conditions of employment. *Id.* § 174.002. An agreement reached under chapter 174 is binding and enforceable against the public employer and fire fighters or police officers covered by it. *Id.* § 174.109.

Sections 174.005 and 174.006 of the Local Government Code state the effect of chapter 174 and the collective bargaining contract on other statutes, including chapter 143 of the Local Government Code:

§ 174.005.

This chapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision or agent of the state, including a personnel board, civil service commission, or home-rule municipality.

§ 174.006.

(a) A state or local civil service provision prevails over a collective bargaining contract under this chapter unless the collective bargaining contract specifically provides otherwise. [Emphasis added.]

Section 174.006(a) of the Local Government Code is a recodification, without substantive change, of former article 5154c-1, section 20(b), V.T.C.S. See Act of May 15, 1993, 73d Leg., ch. 269, §§ 4, 6, 1993 Tex. Sess. Law Serv. 990, 1265-75. The former codification makes the meaning of this provision clear:

Provisions of collective bargaining contracts made pursuant to this Act shall take precedence over state or local civil service provisions whenever the collective bargaining contract, by agreement of the parties, specifically so provides. Otherwise, the civil service provisions shall prevail.

Act of April 25, 1973, 63d Leg., ch. 81, 1973 Tex. Sess. Law. Serv. 151, 159 (formerly codified as V.T.C.S. art. 5154c-1, § 20(b)).³ Pursuant to this provision, the Texas Supreme Court has held that a collective bargaining contract entered into under former article 5154c-1, V.T.C.S., now chapter 174, prevailed over a civil service provision in former article 1269p, V.T.C.S., now chapter 142 of the Local Government Code. *Kierstead v. City of San Antonio*, 643 S.W.2d 118, 121 (Tex. 1982) (finding that statutory guarantee of a forty hour week was waived by agreement adopted under predecessor of chapter 174).

³The predecessor of Local Government Code chapter 143 was in existence when the legislature adopted the predecessor of chapter 174. See Act of May 15, 1947, 50th Leg., ch. 325 (adopting predecessor of chapter 143 of Local Government Code); Act of April 25, 1973, 63d Leg. ch. 81, 1973 Tex. Gen. Laws 151 (adopting predecessor of chapter 174 of the Local Government Code).

In *City of San Antonio's Firemen and Policemen's Civil Service Commission v. Villanueva*, 630 S.W.2d 661 (Tex. App.--San Antonio, 1981, writ ref'd n.r.e.), the court stated that the following provision of the collective bargaining agreement showed that "the parties have agreed that the provisions of the agreement shall control over state and local civil service provisions":

Unless otherwise provided in this contract, in cases of conflict, the provisions of this contract will control over Article 1269m, Civil Service Commission Rules, and American Arbitration Rules

City of San Antonio's Firemen and Policemen's Civil Service Commission, 630 S.W.2d at 665. Thus, a provision of a collective bargaining contract formed under chapter 174 will prevail over a provision of a civil service statute, assuming that the contract specifically states that its provision will prevail over the civil service provision.

Section 143.026 of the Local Government Code establishes the procedure for filling beginning positions in a fire department, whereby the chief of the fire department must appoint one of the three people having the highest grades on the eligibility list. See Local Gov't Code § 143.003(2) (defining "department head" as chief or head of a fire or police department). A provision of a collective bargaining contract under chapter 174 will prevail over a state or local civil service provision if the contract specifically so provides. *Id.* § 174.006(a). Accordingly, a city that has adopted chapters 143 and 174 of the Local Government Code may agree with the collective bargaining agent representing its fire fighters to include provisions on entry-level employment in the collective bargaining agreement that will prevail over section 143.026 of the Local Government Code, if the agreement specifically provides that its provisions prevail over the statute.

S U M M A R Y

A city that has adopted chapters 143 and 174 of the Local Government Code may agree with the collective bargaining agent representing its fire fighters to include provisions on entry-level employment in the collective bargaining agreement that will prevail over section 143.026 of the Local Government Code, if the agreement specifically provides that its provisions prevail over the statute.

Yours very truly,



Susan Garrison
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Opinion Committee